RICHARD LAW, P.C.
Diane E. Richard (State Bar No. 204897)
5060 N. Harbor Drive, Suite 265
San Diego, CA 92106
Telephone: (619) 880-5534; Facsimile: (619) 880-5459
diane@richardlawpc.com

Attorneys for PLAINTIFFS JOANABELLE PIZARRO ORDONA and TAKEYA RIDEOUT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

JOANABELLE PIZARRO ORDONA, TAKEYA RIDEOUT, Individually and on Behalf of Other Members of the Public and those Similarly Situated,

Plaintiffs,

v.

FIRST CLASS NURSES, INC., a California Corporation,
AMGAD WAHBA,
RAMY WAHBA, and
DOES 1-10, Inclusive,

Defendants.

Case No. 30-2021-01238237-CU-OE-CXC

ASSIGNED FOR ALL PURPOSES TO:
HONORABLE LON F. HURWITZ
DEPARTMENT: CX-103
ACTION FILED: DECEMEBER 27, 2021
FAC FILED: MARCH 23, 2022
ANSWER FILED: APRIL 26, 2022

CLASS ACTION/PAGA ACTION

NOTICE OF RULING

Hearing:
Date: October 27, 2023
Time: 1:30 p.m.
Location: Dept.: CX-103

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TO ALL INTERESTED PERSONS AND PARTIES, AND THEIR ATTORNEY OF RECORD:

PLEASE TAKE NOTICE THAT the Honorable Lon F. Hurwitz, in Department CX-103 of the Orange County Superior Court, located at Civil Complex Center, 751 West Santa Ana Blvd., Santa Ana, CA 92701, issued a ruling on Joanabelle Pizarro Ordona and Takeya Rideout's ("Plaintiffs") Motion for Preliminary Approval of Class Action Settlement that was set for hearing on October 27, 2023 at 1:30 p.m. A true and correct copy of the Court's ruling on Plaintiffs' Motion for Preliminary Approval of Class Action Settlement is attached hereto as **Exhibit A**. Pursuant to the attached Court's ruling:

1. The hearing on the Motion for Preliminary Approval is CONTINUED to January 26, 2024 at 1:30 p.m. in Department CX103 so that Plaintiffs may address the issues identified in the Court's ruling.
2. Counsel must file supplemental papers addressing the Court's concerns no later than fourteen (14) calendar days prior to the continued hearing date. Counsel must also provide red-lined versions of all revised papers. Plaintiffs [sic] should also provide the Court with an explanation of how the pending issues were resolved, with precise citation to any corrections or revisions. A supplemental declaration or brief that simply asserts the issues have been resolved, or does not clearly state a specific concern has been resolved, is insufficient and will result in a continuance.
3. Plaintiff to give notice of the Court's ruling, including to the LWDA, within five (5) calendar days, and file proof of service.
4. The Court does not require any physical or remote appearance at the hearing scheduled for October 27, 2023.
5. The Status Conference scheduled for October 27, 2023 is OFF CALENDAR.

Respectfully submitted,

RICHARD LAW, P.C.

October 31, 2023

By: Diane Richard

DIANE E. RICHARD
Attorney for Plaintiffs,
Joanabelle Pizarro Ordona and
Takeya Rideout

EXHIBIT A

12	**21-01238237** **Ordona vs. First Class Nurses, Inc.**	**1. Motion for Preliminary Approval of Class Action Settlement** **2. Status Conference** **Motion for Preliminary Approval of Class Action and PAGA Settlement** FACTS/OVERVIEW: This is a putative wage-and-hour class action and PAGA matter. On December 27, 2021, Plaintiffs Joanabelle Pizarro Ordona and Takeya Rideout, individually and on behalf of other members of the public and those similarly situated ("Plaintiffs"), filed a Complaint against Defendant First Class Nurses, Inc. (ROA 2). The Complaint alleged 13 causes of action for: 1. Training / Orientation Indemnification 2. Illegal Waiver of Training / Orientation Indemnification; 3. Failure to Indemnify for Business Expenses; 4. Illegal Wage Non-Disclosure Agreement; 5. Illegal Non-Competition Agreement; 6. Overtime; 7. Minimum Wages; 8. Regular Wages; 9. Rest Periods and Rest Premiums; 10. Meal Periods and Meal Premiums; 11. Failure to Pay Timely Wages Upon Separation of Employment;

		12. Failure to Provide and Maintain Compliant Itemized Wage Statements; and 13. Unfair Competition On March 23, 2022, pursuant to stipulation and order, Plaintiffs filed the operative First Amended Complaint ("FAC"), which added two individual defendants (Amgad Wahba and Ramy Wahba) and a PAGA claim. (ROA 27). On August 11, 2023, Plaintiffs filed the current Motion for Preliminary Approval. (ROA 99). None of the parties have sought to compel arbitration, and there are no discovery orders in place. **SUMMARY OF THE SETTLEMENT**: A copy of the fully executed Class Action and PAGA Settlement Agreement is attached as Exhibit 1 to the Declaration of Diane E. Richard. (ROA 97). Class Definition: "All non-exempt employees of FCN who worked for FCN at the Centinela Hospital Medical Center in Inglewood, California at any time during the Class Period." [Settlement, ¶ 1.5.] Class Period: December 27, 2017 to March 1, 2023. Estimated Class Size: Approx. 158 [Id., ¶ 4.1.] Aggrieved Employees Definition: "All non-exempt employees of FCN who worked for FCN at the Centinela Hospital Medical Center in Inglewood, California at any time during the PAGA Period." [Id., ¶ 1.4.] PAGA Period: December 24, 2020 to March 1, 2023.

Estimated Number of Aggrieved Employees: Approx. 102 [Id., ¶ 4.1.]

Gross Settlement Amount (“GSA”): $260,000.00

GSA does not include employee payroll taxes, which will be paid separately by Defendants. [Id., ¶ 3.1.]

$ 104,000.00 Attorneys’ fees (NTE 40%)

$ 15,000.00 Litigation costs (NTE)

$ 6,000.00 Administration costs (NTE)

$ 10,000.00 Enhancements ($5,000 each)

$ 5,000.00 PAGA Penalties (75%/25%)

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$ 120,000.00 Net Settlement Amount

Escalator Clause: Defendants estimate a total of 6,729 workweeks and 158 Class Members. If number of workweeks or Class Members increases by more than 10%, then GSA will increase proportionally. [Id., ¶ 8.]

Monetary Relief / Payments to Class:

How calculated? Pro rata based on number of Workweeks. [Id., ¶ 3.2.4.]

PAGA Payments - pro rata share based on number of workweeks. [Id., ¶ 3.2.5.1.]

Reversion? No.

Claims Made? No.

		Taxation? Class payments – allocated 20% as wages, 80% as interest and penalties. [Id., ¶ 3.2.4.1.] PAGA payments – employees assume full responsibility for any taxes owed. Administrator will report individual PAGA payments on Form 1099s. [Id., ¶¶ 3.2.5.1 and 3.2.5.2.] Uncashed Checks? Checks uncashed after 180 days will be disbursed to State Unclaimed Property Fund. [Id., ¶ 4.4.3.] Average Pymt. $708.45 (high $1,932.62, low $16.99). [Id., ¶ 41.] **Injunctive Relief Components**: 1. Defendants revised policies to no longer include liquidated damages and non-compete provisions in its nurse agreement, and modify confidentiality provision in nurse agreements to clarify that rates of pay can be discussed and disclosed; and 2. Defendants have ceased, and will continue to cease, all enforcements of liquidated damages provisions and all collection proceedings, and agree they will not receive any monies for liquidated damages (this binds Defendants and Released Parties, assignees, attorney and collection firms). [Id., ¶ 35.] Injunctive relief addresses 1st, 2nd, 4th, and 5th causes of action in FAC. [Id., ¶ 36.] **CERTIFICATION OF CLASS:** The party seeking class certification must establish three things: "(1) the existence of an ascertainable and sufficiently numerous class, (2) a well-defined community of interest, and (3) substantial benefits from certification

		that render proceeding as a class superior to the alternatives." (Brinker Restaurant Corp. v. Sup. Ct. (2012) 53 Cal.4th 1004, 1021.) It appears that these elements are met, and the proposed class can be conditionally certified for settlement purposes. The parties agree to conditional certification of the class for settlement purposes. The class appears to be ascertainable, sufficiently numerous, and well-defined. **Settlement Issues:** 1. Released Class Claims: All claims, demands, rights, liabilities, and causes of action asserted in the Settlement Action and/or that could have been asserted based on the factual allegations, including claims of: (1) unpaid overtime; (2) unpaid meal period premiums; (3) unpaid rest period premiums; (4) unpaid minimum wage; (5) final wages not timely paid; (6) non-compliant wage statements; (7) unreimbursed business expenses; (8) claims relating to defects in employment agreements; and (9) unfair competition. Does not include claims for PAGA penalties, wrongful termination, violation of the FEHA, disability, vested benefits, claims outside of Class Period, or claims relating to the enforcement of and/or collection matters of the employment agreements. [Id., Sec. 5.2.] 2. PAGA Release: All claims, demands, rights, liabilities, and causes of action for PAGA penalties that were asserted in the Settlement Action and the PAGA Notice submitted by Plaintiffs and/or that could have been asserted based on the factual allegations, including any claims for PAGA penalties for: (1) unpaid overtime; (2) unpaid meal period premiums; (3) unpaid rest period premiums; (4) unpaid minimum wage; (5) final wages not timely paid; (6) non-compliant wage statements; (7) unreimbursed business expenses; and (8) claims

		relating to defects in employment agreements. Does not include claims for PAGA penalties outside of PAGA period, wrongful termination, violation of the FEHA, disability, vested benefits, or claims relating to the enforcement of and/or collection matters of the employment agreements. [Id., Sec. 5.2.] Released Parties – includes Amgad Wahba, Ramy Wahba, and First Class Nurses, Inc. and all of its parent companies, subsidiaries, attorneys, divisions, affiliates, officers, shareholders, directors, employees, agents, fiduciaries, partners, representatives, subrogees, and related corporations. Does not include Centinela Hospital Medical Center. [Id., Sec. 1.41.] 3. Named Plaintiffs' Release: Generally release all known and unknown claims they may have against Defendants, and all parent companies, subsidiaries, attorneys, divisions, affiliates, officers, shareholders, directors, employees, agents, fiduciaries, partners, representatives, subrogees, related corporations, successors and predecessors in interest, and any individual or entity which could be jointly or severally liable with Defendants. Does not extend to any claims or actions to enforce Settlement Agreement, or any claims for vested benefits, disability benefits, workers' compensation, or occurrences outside of Class Period. Includes Section 1542 waiver. [Id., Secs. 5.1 and 5.1.1.] 4. Valuation of Claims: Class Counsel conducted discovery and investigation of policy and procedure documents, time and pay records, legal and factual positions of Defendants, potential damages, and employment agreements used in conjunction with Class Members' work at Centinela Hospital. [Richard Decl., ¶ 18.] Parties participated in mediation session in February 2023, and discussed

		settlement in light of financial hardship claimed by Defendants due to loss of Centinela Hospital as their largest client and primary source of revenue. [Id., ¶ 20.] Counsel attests as follows regarding the valuation of claims [Id., ¶¶ 34-40]: **Injunctive Relief Claims:** 1st and 2nd causes of action – cost savings of $27,000 per person associated with elimination of $27,000 liquidated damages provision in each employment contract. For 150 persons, is $4,050,000 in value. Additional benefit is value associated with employees freely being able to switch jobs, and secure higher wages and better working conditions elsewhere. Liquidated damages clause required employees to stay employed at Centinela Hospital for two years to avoid paying liquidated damages. [Id., ¶ 39.] 4th cause of action – Defendants enjoined from including confidentiality clause in employment contracts. Prospective value considers benefit of employees being able to freely discuss and disclose pay rates without fear of contractual prohibitions. 5th cause of action – Elimination of non-competition clauses provides freedom to change employment. Monetary Relief Claims: 1st and 2nd causes of action – Indemnification achieved by way of the injunctive relief. Potential value can consider cost savings associated with dollar amount of the liquidated damages provision, in addition to attorneys' fees. 3rd cause of action – Defendants failed to indemnify employees for expenditures or losses for electronic devices/equipment and internet or cellular service.

		Maximum estimated damages between $67,290 and $100,935 based $10 to $15 per claim and 6,729 workweeks. Interest calculated between $24,000 and $36,000, plus recoverable attorneys' fees and costs. Excluding fees and costs, maximum potential value between $91,290 and $136,935. 9th and 10th causes of action – Based on 1/3 of weekly breaks as non-compliant, potential value of meal and rest break premium wages is $431,867 based on 6,729 workweeks. Interest calculated at $154,000. Excluding fees and costs, maximum potential value of $585,867. 6th, 7th, and 8th causes of action – Taking into account dispute regarding regular rate of pay, overtime, minimum wage, and paid sick/vacation claims valued at $340,537 in unpaid wages, and interest calculated at $150,000. Excluding fees and costs, maximum potential value of $490,537. 11th cause of action – At time of mediation, it was unclear who qualified for waiting time penalties—i.e., were penalties due for all whose assignments ended with Centinela Hospital or for only those whose employment had ended with Defendants. Potential value based on number of persons who qualified and actual regular rate of pay. Potential penalties ranged from $187,200 (13 terminated employees) to $1,163,250 (75 terminated employees). Potential value likely decreased after settlement due to holding in Young v. REMX Specialty Staffing (2023) 91 Cal.App.5th 427, where court concluded that waiting time penalties apply when temporary services employer discharges an employee from employment with the temporary services employer, not when an employer terminates an employee from a particular work assignment.

		12th cause of action – For one year statute of limitations, calculated penalty amount for non-compliant wage statements is $98,000 at $50 per paycheck, excluding attorneys' fees and costs. 14th cause of action – Calculated value of PAGA penalties, without stacking and using initial violation rate, is $424,667. Assumes Plaintiffs would prevail on 100% of claims and Court would not reduce penalty amounts. Total Potential Maximum Liability - $772,404 for wage claims and $1,604,185 for non-wage claims, for combined total of $2,376,589. With PAGA penalties, total is $2,801,256. GSA is approximately 10% of total maximum value, plus 100% of injunctive relief sought (which has potential value of more than $4,000,000). [Id., ¶ 40.] Since the injunctive relief is sizeable, the cash compensation is fair and reasonable after taking into account the risks of continued litigation, Defendants' defenses, and First Class Nurses' significant financial hardship as a result of losing Centinela Hospital as its largest client. 5. Requests for Exclusion: Class Members must submit written request by fax, email, or mail no later than 60 days after initial mailing of Class Notice, or 14 days after remailing. Cannot opt out of PAGA portion of settlement. All requests accepted as valid if identify of Class Member and desire to opt out can be determined. Administrator's determination is final and not susceptible to challenge. [Settlement, Sec. 7.5.1.] ISSUE: Court prefers at least 45 days for response period after remailing. Settlement must provide that Court

		retains final authority as to validity and authenticity of opt out requests. 6. Objections: Class Members must submit written objections by fax, email, or mail no later than 60 days after initial mailing of Class Notice, or 14 days after remailing. [Id., Sec. 7.7.2.] ISSUE: Court prefers at least 45 days for response period after remailing. Settlement must provide that Class Members can verbally object at final approval hearing. 7. Disputes: Class Members can submit written disputes by fax, email, or mail no later than 60 days after initial mailing of Class Notice, or 14 days after remailing. Should include supporting documentation, otherwise Administrator entitled to presume workweeks and PAGA pay periods are correct. Administrator's determination of workweeks and pay periods is final and not susceptible to challenge. [Id., Sec. 7.6.] ISSUE: Court prefers at least 45 days for response period after remailing. 8. Attorneys' Fees and Costs: Class Counsel will move for award of not more than 40% of GSA, currently estimated at $104,000. Also will seek reimbursement of costs not to exceed $15,000. If Court approves less than amounts requested, remainder will be allocated to the Net Settlement Amount and distributed pro rata to Class Members. [Id., Sec. 3.2.2.] ISSUE: Court is disinclined to approve attorneys' fees higher than 33.33% of GSA. At Final Approval, counsel must provide billing records in support of its fees and documentation of costs. Counsel must also disclose whether there is a fee-splitting arrangement with any other counsel or confirm none exists. (CRC 3.769(b).)

9. Enhancement: The two Class Representatives are to receive enhancements of not more than $10,000 each. If Court approves lesser amounts, remainder will be allocated to the Net Settlement Amount and distributed pro rata to Class Members. [Id., Sec. 3.2.1.] Plaintiff Ordona attests she spent approximately 80 hours on this litigation, and Plaintiff Rideout attest she spent approximately 100 hours. [ROA 101, Declaration of Joanabelle Pizarro Ordona, ¶ 13; ROA 102, Declaration of Takeya Rideout, ¶ 13.] Both address factors set forth in Golba v. Dick's Sporting Goods, Inc. (2015) 238 Cal.App.4th 1251, 1272, and Clark v. Am. Residential Servs., LLC (2009) 175 Cal.App.4th 785, 804, and attest as to: (1) the risks, financial and otherwise, they each faced in bringing this action; (2) the amount of time and effort spent on the litigation; (3) the personal benefit each received as a result of the litigation; (4) the personal difficulties they encountered; and (5) the degree to which the class benefitted from their actions.

In light of the considerable financial and career risks they faced, and the substantial injunctive relief achieved for the Class, the enhancement payments are fair and reasonable.

10. Settlement Administrator: Parties have retained ILYM Group, Inc. as the Settlement Administrator. Administrator will be paid up to $6,000 for administration fees and expenses. Administrator will post Settlement Agreement, Class Notice, motions for preliminary and final approval, attorneys' fees motion, and Final Judgment on its website. Administrator will file declaration no later than 14 days before counsel files motion for final approval. Within 10 calendar days after disbursement of all settlement funds, Administrator will provide counsel with final report, and 15 days before final accounting

		hearing, Administrator will file a declaration attesting to disbursement. [Id., Sec. 7.8.] 11. Notice to LWDA: Counsel attests that a PAGA notice was submitted to the LWDA on December 24, 2021. [Richard Decl., ¶ 10.] ISSUE: Although counsel provides proof of submission to the LWDA, she does not provide copies of the actual letters. Preliminary approval will not be granted unless LWDA letters are submitted to the Court with the moving papers. 12. Continuing Jurisdiction: Settlement states that Court shall retain jurisdiction over the parties, action, and settlement for purposes of enforcing the Settlement Agreement, addressing settlement administration matters, and addressing post-Judgment matters. [Settlement, Sec. 10.3.] ISSUE: Settlement should state that continuing jurisdiction is pursuant to CCP § 664.6 and CRC Rule 3.769(h). 13. Concurrent Pending Cases: Counsel attests there are no known current pending cases, with the last search occurring on July 24, 2023. [Richard Decl., ¶ 9.] **ISSUES RE CLASS NOTICE:** The proposed Class Notice is attached as Exhibit A to the Settlement. Counsel must address the following issues before preliminary approval will be granted: 1. Class Notice is to be revised consistent with issues identified above.

		2. Title of Class Notice should include reference to PAGA portion of the litigation. 3. First sentence in third recital on first page should show PAGA period commencing on 12/24/2020. 4. Page 3, Section 3, should read "Superior Court Judge Lon F. Hurwitz." 5. Class Notice should provide actual proposed date for Final Approval hearing as stated in the Proposed Order. **ISSUES RE PROPOSED ORDER: (ROA 90)** 1. The Proposed Order is to be revised consistent with the issues identified above. 2. Caption should state it is for approval of "Class Action and PAGA" Settlement. 3. Paragraph 13 should be amended to reflect actual preliminary approval date. It should also include location (address and department number) of Final Approval hearing. 4. Paragraph should be added regarding the Court's continuing jurisdiction pursuant to CCP § 664.6 and CRC Rule 3.769(h). 5. Should include requirement that at final approval, Settlement Administrator must provide copy of its invoice with its declaration regarding administration of the settlement. **<u>RULING:</u>** The hearing on the Motion for Preliminary Approval is **CONTINUED** to January 26, 2024 at 1:30 p.m. in

		Department CX103 so that Plaintiffs may address the issues identified above. Counsel must file supplemental papers addressing the Court’s concerns no later than fourteen (14) calendar days prior to the continued hearing date. Counsel must also provide red-lined versions of all revised papers. County should also provide the Court with an explanation of how the pending issues were resolved, with precise citation to any corrections or revisions. A supplemental declaration or brief that simply asserts the issues have been resolved, or does not clearly state a specific concern has been resolved, is insufficient and will result in a continuance. Plaintiff to give notice of this Court’s ruling, including to the LWDA, within five (5) calendar days, and file proof of service. The Court does not require any physical or remote appearance at the hearing scheduled for October 27, 2023. **The Status Conference is OFF CALENDAR.** If the parties do not intend to submit on the tentative, please inform the clerk by emailing her before 12:00 p.m. on the day of the hearing at CX103@occourts.org.

PROOF OF SERVICE

Joanabelle Pizarro Ordona, et al. v. First Class Nurses, Inc. **(30-2021-01238237-CU-OE-CXC)**

1. At the time of service, I was a United States citizen, a resident of the County of San Diego, over 18 years of age, and not a party to or interest in this action.

2. My business address is 5060 N. Harbor Drive, Suite 265, San Diego, CA 92106.

3. On **October 31, 2023**, I served the following document(s), including all exhibits thereto:

   - **NOTICE OF RULING**

4. I served the document(s) on the following:
   FISHER & PHILLIPS LLP
   Boris Sorsher (State Bar No. 251718)
   Lisa Peterson (State Bar No. 292798)
   2050 Main Street, Suite 1000
   Irvine, CA 92614
   Telephone: (949) 851-2424; Facsimile: (949) 851-0152
   Electronic Service Addresses: bsorsher@fisherphillips.com; lpeterson@fisherphillips.com

   LWDA
   Online Submission at: https://dir.tfaforms.net/315

5. The document(s) were served by the following means:

☒ **BY ELECTRONIC SERVICE** –Based on a court order, court rule, or an agreement of the parties to accept electronic service, I caused such document(s) to be delivered to the person(s) at the electronic service address set forth above. Said document(s) was/were served electronically and the transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **October 31, 2023**, at San Diego, California.

Diane Richard	/s/ Diane Richard
Name	Signature